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June 9, 2003

CALIF ENERGY COMMISSION

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RECEIVED IN DOCKETS

Chairman William J. Keese
Commissioner Robert Pernell
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

Re: Letter of June 5, 2003 from Paul M. Sensibaugh

Dear Chairman Keese and Commissioner Pernell:

Pursuant to the direction of the Committee on June 3, 2003, the East Altamont Energy Center, LLC ("Applicant") submits this response to the letter of June 5, 2003 from Paul M. Sensibaugh, General Manager of the Mountain House Community Services District. ("MHCS D").

The Committee should reject Mr. Sensibaugh's suggested revisions to Conditions of Certification Soils&Water-5 and Soils&Water-6. There is no evidence of record to support Mr. Sensibaugh's proposed revisions. Moreover, the arguments that Mr. Sensibaugh proffers in his June 5 letter are directly contradicted by his previous representations in this proceeding.

Mr. Sensibaugh requests that a new sentence be added to Soils&Water-5 to require EAEC to sign a water supply requirement directly with MHCS D. Mr. Sensibaugh states that "the MHCS D is the only feasible provider of wastewater to the EAEC." However, in a June 30, 2002 letter to Cheri Davis (former Staff Project Manager), Mr. Sensibaugh stated:

The Assistant County Counsel has reviewed the Service Duplication Law, Public Utilities Code 1501 et seq.; Water Recycling Act of 1991, Water Code 13575 et seq.; and the Water Recycling in Landscaping Act, Government Code section 65601, and has determined that in order to provide recycled water to an industry within the Byron-Bethany Irrigation District (BBID) service area *MHCS D must contract with BBID for such distribution*. MHCS D staff met with BBID staff soon after the EAEC was originally proposed and anticipated a future agreement to provide recycled water if the energy plant was permitted. [Ex. 2WWW, p. 2, emphasis added.]

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Moreover, as recently as February 18, 2003, Mr. Sensibaugh wrote a letter to the San Joaquin County Board of Supervisors which stated: "In order for MHCS D to eventually supply recycled water to the EAEC, if the project is permitted and constructed, the Board of Directors would have to enter into subsequent agreements with BBID detailing responsibilities, consumption rates and costs."

Notwithstanding Mr. Sensibaugh's current confusion regarding the respective roles of BBID and MHCS D, the record in this proceeding shows that the San Joaquin Assistant County Counsel, BBID and Applicant are in agreement that MHCS D must contract with BBID for distribution of recycled water to EAEC.¹ Therefore, the current language of Soils&Water-5 and 6 is fully supported by the record. No further revisions to these Conditions of Certification are required.

Mr. Sensibaugh also requests that Soils&Water-5 and 6 be revised to require that the recycled water pipeline include a pump station and a backup emergency power supply. There is no evidence of record to support such requirements, nor were these specifications mentioned in Mr. Sensibaugh's previous appearances and correspondence in this proceeding. Even his letter of June 5, 2003 does not explain the purpose of this request. In short, there is nothing to explain, much less justify, this request.

We also urge the Committee to reject all of the revisions to the Findings proposed by Mr. Sensibaugh.

Finding 15 states "Applicant will design and construct the EAEC to utilize recycled water when it becomes available from BBID." This is an accurate statement of fact. This Finding does not address current ownership or control of recycled water. Therefore, Mr. Sensibaugh's proposed revision is irrelevant to this Finding.

Regarding Findings 16 and 17, Mr. Sensibaugh suggests dropping reference to BBID based on his contention that MHCS D should directly contract with EAEC. As noted above, this contention has been rejected by the San Joaquin County Counsel. (Ex. 2WWW, p. 2.)

Finding 25 states in part that "The quantity of recycled water available to EAEC will be determined by BBID under their balanced use approach." Mr. Sensibaugh's letter gives no reason for his suggested deletion. Finding 25 is supported by the record and should not be deleted.

¹ San Joaquin Assistant County Counsel: Ex. 2WWW.

Finding 26 states, in part, that "MHCS D is not currently permitted to discharge tertiary treated wastewater to Old River and it may only do so if it demonstrates to the RWQCB that continued reuse through land irrigation would be infeasible." Mr. Sensibaugh asserts that the last sentence is erroneous, yet his letter concedes, as Mr. Grimsman (General Manager of Trimark Communities) testified under oath,² that the river discharge permit does not currently allow discharge, because the permit requires testing prior to implementation. Therefore, Finding 26, which states that MHCS D is not currently permitted to discharge to Old River, is correct as written.

Finding 28 states: "Mountain House currently plans to reuse effluent from the first phase of development on lands outside of the development. It has no current plans to install infrastructure for reuse of its effluent within the development. Instead, its preference is to discharge the effluent to EAEC, as other alternatives risk degradation to groundwater."

It is interesting that Mr. Sensibaugh states that MHCS D does have plans to install reuse infrastructure for golf courses and parks. The Committee may recall that Duane Grimsman, General Manager of Trimark Communities, testified under oath on October 16, 2002 that golf courses and parks in the MHCS D would receive potable water, not recycled water.³

² "CHAIRMAN KEESE: Thank you. And you're disposing it now, is that what --
MR. GRIMSMAN: No. Right now we're, on an interim basis, we're going to be putting it on some farmland that we own immediately north of our wastewater treatment plant. Our permit requires that we generate a certain volume of wastewater tested to make sure it complies with Title 22 requirements, and then it's going into the river.
CHAIRMAN KEESE: Okay. And that would be about when?
MR. GRIMSMAN: It'll be approximately next summer, not this coming summer but a year later."
(02/24/03 RT)

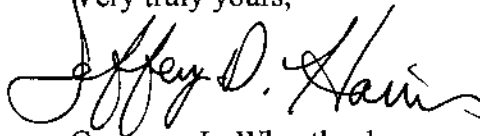
³ "MR. WHEATLAND: We've been having a lot of talk today about purple pipe. There won't be any purple pipe in the first phase of your development, is that right?
MR. GRIMSMAN: That's correct.
MR. WHEATLAND: So with respect to parks, those will not be provided any recycled water in the first phase, is that right?
MR. GRIMSMAN: That's correct.
MR. WHEATLAND: And that's the same with respect to greenbelts, is that correct?
MR. GRIMSMAN: Correct.
MR. WHEATLAND: Or street landscaping, is that correct?
MR. GRIMSMAN: Correct.
MR. WHEATLAND: What type of water will it receive?
MR. GRIMSMAN: It will receive potable water.
MR. WHEATLAND: Potable water? For the parks, the greenbelts and the streetscaping, is that right?
MR. GRIMSMAN: That's correct.
MR. WHEATLAND: And it's also your plan to provide potable water for those facilities in subsequent phases of your development, is that correct?
MR. GRIMSMAN: That has been the plan since day one." (10/16 RT 369-370)

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Notwithstanding the apparent contradiction between Mr. Grimsman's testimony and Mr. Sensibaugh's letter, and assuming both Trimark and MHCS D have spoken factually, perhaps MHCS D contemplates installing recycled water infrastructure and has not communicated those plans to Trimark. In any event, Finding 28 remains an accurate statement of the facts in the evidentiary record. If MHCS D does have plans to reuse some of its recycled water within the Community, such reuse may be environmentally and economically preferable to the Mountain House community and does not materially change either the Applicant's commitment to utilize all recycled water which is made available from BBID, or the effectiveness of the condition of certification proposed by the Commission to meet this objective.

Despite the confusion and contradictions in Mr. Sensibaugh's most recent letter of June 20, 2003, the Applicant is confident that these points of confusion will be amicably resolved between BBID and MHCS D once the EAEC is certified by the Commission. The Findings and Conditions in the RPMPD provide a clear, workable framework for the MHCS D and BBID to negotiate an agreement to provide available recycled water to EAEC. As the Committee has noted, all parties have strong incentives to develop a mutually beneficial arrangement. (2/24/03 RT 5.) Even Mr. Sensibaugh and Mr. Grimsman agree. (Id. at 121.)⁴ Therefore, we respectfully urge the Committee to reject the further revisions to the RPMPD set forth in Mr. Sensibaugh's letter of June 5, 2003.

Very truly yours,



Greggory L. Wheatland
Jeffery D. Harris

Attorneys for East Altamont Energy Center, LLC

⁴ As Mr. Grimsman, speaking together with Mr. Sensibaugh, told the Committee: "We have tremendous incentives to work with Calpine and BBID in coming up with an agreement for the provision of our effluent to their facility...And so there's quite a bit of incentive for us to be reasonable throughout a negotiation. And assuming this project were to be permitted, it's our intent to proceed post haste with negotiating an agreement that would be subject to them obtaining their financing and building the plant." (2/24/03 RT 121-122.)